



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing
Administration
Region IX

Refer to: MCD-RHR

75 Hawthorne St.
Suite 401
San Francisco, CA 94105

AUG 12 2001


Phyllis Biedess, Director
Arizona Health Care Cost Containment System
801 E. Jefferson
Phoenix, AZ 85034

Dear Ms. Biedess:

Enclosed is an approved copy of Arizona State plan amendment (SPA) 00-012, regarding Medicaid estate recovery. I am approving this SPA with the requested effective date of October 1, 2000.

If you have any questions, please have your staff contact Ronald Reepen at (415) 744-3601.

Sincerely,


Linda Minamoto
Associate Regional Administrator
Division of Medicaid

Enclosures

cc:

Joan Peterson, CMS, CMSO, FCHPG
Elliot Weisman, CMS, CMSO, PCPG

*cc: Phyllis / Branch
orig Lynn*

Revision: HCFA-PM-95-3 (MB)
May 1995

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(b) Adjustments or Recoveries

The State complies with the requirements of section 1917(b) of the Act and regulations at 42 CFR 433.36(h)-(i).

Adjustments or recoveries for Medicaid claims correctly paid are as follows:

- (1) For permanently institutionalized individuals, adjustments or recoveries are made from the individual's estate or upon sale of the property subject to a lien imposed because of medical assistance paid on behalf of the individual for services provided in a nursing facility, ICF/MR, or other medical institution.

 _____ Adjustments or recoveries are made for all other medical assistance paid on behalf of the individual.
- (2) _____ The State determines "permanent institutional status" of individuals under the age of 55 other than those with respect to whom it imposes liens on real property under §1917(a) (1) (B) (even if it does not impose those liens).
- (3) For any individual who received medical assistance at age 55 or older, adjustments or recoveries of payments are made from the individual's estate for nursing facility services, home and community-based services, and related hospital and prescription drug services.

X In addition to adjustment or recovery of payments for services listed above, payments are adjusted or recovered for other services under the State plan as listed below:

All services provided to Arizona Long Term Care System members pursuant to the 1115 waiver.

Capitation payments, Medicare Part A and B Premiums, Reinsurance payments, Fee-For-Service payments, and Medicare coinsurance and deductibles paid by AHCCCSA.

Capitation payment rate includes Medicare coinsurance and deductibles paid by program contractors. Fee-for-service payments for Medicare coinsurance deductibles are for claims paid directly by the AHCCCS Administration.

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5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

Undue Hardship Waiver of Estate Claim.

AHCCCS waives its claim against the AHCCCS member's estate when any one of the heirs to the estate meets AHCCCS' undue hardship criteria. The criteria in AHCCCS' undue hardship criteria applies to situations when the estate contains:

a. Real Property assets only or both Real and Personal Property assets and b. Personal Property assets only. AHCCCS' undue hardship criteria is described in a. and b. below:

- a. AHCCCS will waive its claim against the estate when the estate contains Real Property assets only or both Real and Personal Property assets, and
- (1.) The Real Property in the estate is listed as residential property by the Arizona Department of Revenue or County Assessor's Office; and
 - (2.) Any one of the heirs to the estate meets all of the criteria listed in either (a.) through (d.) below or (e.) through (h.) below:
 - (a.) Owns a business that is located at the residential property;
 - (b.) The business has been in operation at the residential property for at least 12 months preceding the AHCCCS member's death;
 - (c.) The business provides more than 50% of the heir(s) livelihood, and
 - (d.) The recovery of the property would result in the heir(s) to the estate losing their means of livelihood;
- Or
- (e.) Currently resides in the residence;
 - (f.) Resided there at the time of the AHCCCS member's death;
 - (g.) Has made the residence his or her primary residence for the 12 months immediately preceding the AHCCCS member's death; and
 - (h.) Owns no other residence.
- b. AHCCCS will waive its claim against the estate when the estate contains Personal Property assets only, and any one of the heirs to the estate meets all of the criteria listed in both (1) and (2) below:
- (1.) The heir(s) annual gross income for their household size is less than the federal income poverty guidelines. New sources of income (for example,

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employment, Social Security, etc.) will be included in determining the household's annual gross income; and

- (2.) The heir does not own a home, land, or other real property.

If there is no heir to the estate that meets AHCCCS' undue hardship criteria as described in either a. or b. above, the State will not waive its claim against the estate. The State, however, will consider a Partial Recovery (reduction) of the estate claim, if one of the heirs to the estate submits a completed application and supporting documentation to substantiate a qualifying condition for a Partial Recovery. The Partial Recovery process is discussed in No 7.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

No initial cost threshold is applied and all potential cases are worked for recovery. However, should an estate enter into litigation, a \$5,700 litigation cost threshold has been established which is applied at the point of litigation to determine whether it is cost effective to pursue recovery. Cases are worked in the order of priority using the amount of the AHCCCS claim and the amount of estate assets as guidelines.

- a. The following factors are taken into consideration in determining whether it is cost effective to pursue recovery:

- (1.) The claim amount;
- (2.) The priority of the claim;
- (3.) Other creditors and the amounts of their claims;
- (4.) Total estate assets;
- (5.) The number of surviving heir(s) to the estate;
- (6.) Legal and administrative costs necessary to obtain recovery; and
- (7.) Consequences of an unfavorable judicial decision.

- b. The litigation threshold of \$5,700 is based on the following methodology:

- (1.) \$2,000 allowance for claim litigation threshold;
- (2.) \$3,200 for attorney fees; and
- (3.) \$500 for miscellaneous expenses (for example, preparing the case for turnover to attorneys, briefing attorneys, or negotiations with estate executor).

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7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):
- a. The TPL Contractor identifies potential cases utilizing referrals provided by AHCCCS and other sources. Referrals include, but are not limited to:
 - (1.) AHCCCS' automated eligibility systems;
 - (2.) Authorized representative;
 - (3.) Estate representative;
 - (4.) Personal representative;
 - (5.) Public fiduciary;
 - (6.) Probate court; or
 - (7.) Newspaper clipping service.
 - b. Once a referral is received by the TPL Contractor from AHCCCS or other referral source, the TPL Contractor files a Demand for Notice with the Superior (Probate) Court in the county of residence, county of death, and county of property ownership, as appropriate to the individual case to:
 - (1.) Require notice to AHCCCS of all orders and filings regarding the AHCCCS member's estate; and
 - (2.) Assist in Protection of the State's interest in any future estate proceeding.
 - c. Once the TPL Contractor files a Demand for Notice with the Superior Court, and a potential case is identified, the TPL Contractor mails the personal representative a Notice of Intent to File a Claim Against the Estate, Estate Questionnaire, and a copy of the Demand for Notice that was filed with the Superior Court(s).
 - (1.) The Notice of Intent to File a Claim Against the Estate:
 - (a.) Expresses condolences;
 - (b.) Introduces Federal and State Laws authorizing AHCCCS to seek reimbursement for AHCCCS expenditures for the AHCCCS member;
 - (c.) Explains the Demand for Notice filed with the Superior (Probate) Court.
 - (2.) The Estate Questionnaire:
 - (a.) Inquires about Estate Claim Statutory Exemptions and lists documents to provide if there is a:

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- (i.) Surviving spouse of the AHCCCS member;
 - (ii.) Surviving child of the AHCCCS member who is under age 21;
 - (iii.) Surviving child of the AHCCCS member who is blind or disabled.
- (b.) Inquires about property transfers since AHCCCS eligibility was determined.
 - (c.) Inquires about real and personal property owned by the AHCCCS member.
 - (d.) Requests name and address of attorney or personal representative.
 - (e.) Asks if there has been or will be a petition filed for probate of the estate, and if so, date filed and county court in which filed.
 - (f.) Where to send the completed form, timeframes for submitting, and whom to contact with any questions.

The TPL Contractor closes the estate case if documentation is provided that verifies the estate qualifies for an Estate Claim Statutory Exemption, and if requested to do so by the personal representative or heir, files a withdrawal of the Demand for Notice with the Superior (Probate) Court. AHCCCS Demands for Notice that are left on file at the Superior (Probate) Court do not have any legal impact to heirs.

- d. Upon identification that an AHCCCS member has an estate that will be filed by affidavit (small estate) or probated, and no qualifying Estate Claim Statutory Exemption has been identified, the TPL Contractor files a Superior Court Claim Against the Estate with the Superior Court to provide information to the Court and interested parties that the estate is indebted to AHCCCS, and the amount to which the estate is indebted. The TPL Contractor mails a copy of the Superior Court Claim Against the Estate to the personal representative along with the documents that are described in e. below.
- e. Upon filing a Superior Court Claim Against the Estate, the TPL Contractor mails a Notification of the AHCCCS Claim Against the Estate to the personal representative.
 - (1.) The Notification of the AHCCCS Claim Against the Estate includes the following enclosures:
 - (a.) Application Form For Estate Claim Statutory Exemption, Undue Hardship Waiver, Or Partial Recovery Of The AHCCCS Claim Against The Estate;

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- (b.) Chronology of AHCCCS Medical Payment History; and
 - (c.) Copy of the Superior Court Claim Against the Estate that was filed with the Superior (Probate) Court.
 - (2.) The Notification of the AHCCCS Claim Against the Estate provides the following information:
 - (a.) AHCCCS claim amount and an itemization of AHCCCS expenditures to be recovered;
 - (b.) Authority for the AHCCCS estate claim;
 - (c.) Estate Claim Statutory Exemption criteria for a waiver of the estate claim and documentation required to support the criteria. An Estate Claim Statutory Exemption for a waiver of the estate claim exists when the AHCCCS member is survived by a:
 - (i.) Surviving spouse;
 - (ii.) Surviving child under the age of 21; or
 - (iii.) A surviving child who is blind or disabled.
 - (d.) Undue Hardship Waiver of Estate Claim criteria, and documentation required to support the criteria;
 - (e.) Partial Recovery criteria, and documentation required to support the criteria;
 - (f.) Explanation of the enclosed application form and the application process for applying for one or more of the three processes: Estate Claim Statutory Exemption, Undue hardship Waiver of Estate Claim, and/or Partial Recovery;
 - (g.) Timeframes for filing a completed application;
 - (h.) To whom and where to file the application and supporting documentation;
 - (i.) Whom to contact if there are any questions;
 - (j.) The heir's right to file a grievance and request a hearing.
 - f. The personal representative is responsible for notifying the heirs and, if the heirs so choose, filing a request for an Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or a Partial Recovery. Heirs are responsible to provide supporting documentation. Applications must be submitted in writing with supporting documentation within 30 days from the date on the Notification of the AHCCCS Claim Against the Estate.

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- g. An heir may apply to receive a waiver under the Estate Claim Statutory Exemption or Undue Hardship Waiver of Estate Claim processes or a reduction of the claim under the Partial Recovery process based on his or her circumstances. Application and supporting documentation are reviewed first for an Estate Claim Statutory Exemption, followed by an Undue Hardship Waiver of Estate Claim, and lastly, Partial Recovery dependant on the process(es) applied for, and the Decision(s) rendered.
 - h. If supporting documentation for an Estate Claim Statutory Exemption is provided to establish a qualifying exemption, the TPL Contractor reviews the supporting documentation and renders a decision. If the TPL Contractor determines there is a qualifying condition for an Estate Claim Statutory Exemption, the TPL Contractor files a withdrawal of the Superior Court Claim Against the Estate with the Superior (Probate) Court, sends a Decision Notice Regarding the AHCCCS Estate Claim and a copy of the withdrawal of the Superior Court Claim Against the Estate to the personal representative or heir, and closes the case. No further action is taken.
 - i. If there is no qualifying Estate Claim Statutory Exemption, and the application section of the application form has been completed for consideration of an Undue Hardship Waiver of Estate Claim, the application and supporting documentation are reviewed for a qualifying Undue Hardship Waiver of Estate Claim. The TPL Contractor reviews the application and supporting documentation and makes a recommendation to AHCCCS. If AHCCCS determines there is a qualifying Undue Hardship Waiver of Estate Claim, the TPL Contractor files a withdrawal of the Superior Court Claim Against the Estate with the Superior (Probate) Court, sends a Decision Notice Regarding the AHCCCS Estate Claim and a copy of the withdrawal of the Superior Court Claim Against the Estate to the personal representative or heir, and closes the case. No further action is taken.
 - j. A withdrawal of the Superior Court Claim Against the Estate releases both an AHCCCS claim against an estate filed by affidavit (small estate) or probated.
 - k. If there is no qualifying Estate Claim Statutory Exemption or Undue Hardship Waiver of Estate Claim, and the personal representative or heir has completed the application section of the application form for consideration of Partial Recovery, the TPL Contractor reviews the application and supporting documentation and makes a recommendation to AHCCCS. AHCCCS may undertake partial recovery to avoid an undue hardship situation.
- (1.)The factors that AHCCCS considers on a case-by-case basis when reviewing application requests and supporting documentation for a Partial Recovery include:

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- (a.) Financial and medical hardship to the heir(s);
 - (b.) Income of the heir(s) and whether the household income is within 100% of the Federal Poverty Guidelines;
 - (c.) Resources of the heir(s);
 - (d.) Value and type of assets in the estate (real and personal);
 - (e.) Amount of the AHCCCS claim against the estate;
 - (f.) Whether other creditors have filed claims against the estate or have foreclosed on the property; or
 - (g.) Any other factors relevant for a fair and equitable determination under the circumstances of a particular case.
- (2.) If AHCCCS determines there is a qualifying condition for a Partial Recovery, the TPL Contractor sends a Decision Notice Regarding the AHCCCS Estate Claim to the personal representative or heir, and advises them of the approval for a reduction of the estate claim and that the new claim amount represents the amount due. The TPL Contractor closes the case when payment of the reduced claim is paid in full.
- (3.) AHCCCS will not grant a Partial Recovery of the estate claim when there are sufficient assets in the estate to pay the claim and provide for the heir. AHCCCS' decision to grant a Partial Recovery does not waive or release its remaining claim against the estate of the AHCCCS member.
- l. If AHCCCS denies an application for an Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery, the TPL Contractor mails a Decision Notice Regarding the AHCCCS Estate Claim to the personal representative and sends a copy of the decision notice to the heir. The Decision Notice Regarding the AHCCCS Estate Claim informs the personal representative and heir that AHCCCS has denied the application(s) and the full amount of AHCCCS' claim remains in force. The estate will be released when all available funds have been collected.
- m. The Decision Notice Regarding the AHCCCS Estate Claim includes the following information:
- (1.) Decision regarding application for Estate Claim Statutory Exemption, Undue Hardship Waiver of Estate Claim, and/or Partial Recovery as applicable to the specific case;
 - (2.) Reasons why the application was approved/denied;
 - (3.) The amount due and payable to AHCCCS, if any;

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3805. Statute provides that the personal representative of the estate shall pay expenses and creditors of the estate in the following order:

- (1.) Costs and expenses of administration, which includes:
 - (a.) Attorney's fees;
 - (b.) Probate Court fees;
 - (c.) Reasonable compensation of the personal representative or administrator;
 - (d.) Reasonable costs associated with the maintenance and repair of the real property of the estate; and
 - (e.) Other expenses reasonably related to the administration of the estate as determined by AHCCCS.
- (2.) Reasonable funeral expenses.
- (3.) Debts and taxes with preference under federal law.
- (4.) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent.
- (5.) Debts and taxes with preference under the laws of this state.
- (6.) All other claims.